




HISTORIC
FRANKLIN
TENNESSEE

ITEM #11
WRKS 08/09/2011

MEMORANDUM

August 1, 2011

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator 
Vernon Gerth, Assistant City Administrator for Community and Economic Development
Catherine Powers, Planning and Sustainability Director
Paula Kortas, Surety Coordinator

SUBJECT: Contract Number 2011-0111

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information regarding an Interlocal Agreement between the City of Franklin and Williamson County concerning Performance Sureties.

Background

The purpose of this Interlocal Agreement is to set forth the obligations of Williamson County to be responsible for the satisfactory completion of installation of required improvements, such as sidewalks, landscape, etc, as required by a condition of approval of site plan or plats on property owned or operated by Williamson County, but within the corporate boundaries of the City of Franklin. This Interlocal Agreement shall satisfy the condition of any requirement that the County submit a performance agreement and surety for current and future projects which are not yet approved at the time this agreement is executed, or which are approved but building permits have not yet been issued, including the project entitled "Franklin Recreation Complex Addition", City of Franklin Project number 2193, which shall also be subject to this Agreement. This Interlocal Agreement is presented in an effort to streamline the process between the City and the County when future projects are presented for development review.

Financial Impact

Not applicable to this item.

Options

Not applicable to this item.

Recommendation

Approval of the item is recommended.

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF FRANKLIN, TENNESSEE AND
WILLIAMSON COUNTY, TENNESSEE CONCERNING PERFORMANCE SURETY**

THIS INTERLOCAL AGREEMENT, ("Agreement"), is entered into by and between WILLIAMSON COUNTY, TENNESSEE, ("County"), a political subdivision of the State of Tennessee, located at 1320 West Main Street, Franklin, Tennessee, 37064, and the CITY OF FRANKLIN, TENNESSEE, ("City"), a municipal government located at 109 3rd Avenue South, Franklin, Tennessee, 37064.

NOW THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Purpose of Agreement. The purpose of this Interlocal Agreement is to set forth the obligations of the County to be responsible for the satisfactory completion of installation of landscape as required as a condition of approval as agreed by the parties. This interlocal agreement shall satisfy the condition of any requirement that the County submit a performance agreement and surety for current and future projects which are not yet approved at the time this agreement is executed, or which are approved but building permits have not yet been issued, with the exception of the project entitled "Franklin Recreation Complex Addition", City of Franklin Project number 2193, which shall also be subject to this Agreement. A copy of the letter from the County's counsel related to the Franklin Recreation Complex Addition confirming such is attached hereto as Exhibit A. The responsibilities of the Agreement shall only become effective once the parties agree on the conditions of the required landscape installation. The parties agree to cooperate in a reasonable manner to reach an agreement on the conditions.

II. Authority. This Agreement is made and entered into pursuant to the authority granted to the parties under the *Interlocal Cooperation Act*, Tennessee Code Annotated Sections 12-9-101, et seq., and the parties agree that all approvals and filings required by the terms of the Act shall be achieved as soon as possible from and after the execution of this Agreement.

III. Provision of Surety. The County, as both principal and surety, agrees to be responsible for all costs associated with satisfying the conditions and requirements set forth by the Franklin Municipal Planning Commission and agreed by the parties for future approved projects concerning the installation of landscape requirements in accordance with approved plans and conditions as agreed by the parties.

IV. Performance Agreement. The County, as both principal and surety, agrees that it shall be firmly bound in such amounts to satisfy its obligations set forth herein unto the City for the use of the Franklin Municipal Planning Commission, within any certain sites which new projects are approved in the form of site plans, final plats, and miscellaneous construction which are subject to performance sureties to ensure the satisfactory completion of installation of landscape as required by the plans.

V. Term. The initial term of this Agreement shall be for a period of 5 years which shall begin July 1, 2011 and end on June 30, 2016. The parties may agree to extend the Agreement by written agreement for three additional terms of 5 years. This Agreement shall be on a continuing basis and shall be effective for all future projects once the parties have agreed on the conditions and requirements as set forth by the Franklin Municipal Planning Commission.

VI. Termination.

- a. **Breach.** Should any party fail to fulfill in a timely and proper manner a material obligation under this Agreement or if any party should violate a material term of this Agreement, the non-breaching party shall provide the breaching party with notice of the breach. The breaching party will then have seven calendar days from the receipt of the notice to cure the breach. Upon breach or default of any of the provisions set forth herein, the non-breaching party shall be entitled to any and all damages and other equitable relief permitted under the laws of the State of Tennessee.
- b. **Termination for Convenience.** City or County may terminate this Agreement at any time upon 30 days written notice to the other party. Such termination shall not affect in any manner any prior existing obligations between the parties.

VII. Cost. Each party shall be responsible for its own cost for the satisfaction of the obligations set forth herein.

VIII. Cooperation. The parties agree to cooperate fully in order to successfully execute the terms and conditions of this Agreement including obtaining all regulatory and governmental approvals required by this Agreement recognizing that the intent of each party to the other is to serve the individual interests of each party while respecting the conditions and obligations of this Agreement.

IX. Limitation on Liability. Each party shall be responsible for its own actions, and the actions of their employees, contractors, subcontractors, and agents, conducted pursuant to this Agreement. Neither party shall be

liable for claims against the other party unless liability is imposed under the Tennessee Governmental Tort Liability Act.

X. General Terms.

a. **Choice of Law and Forum.** This Agreement shall be exclusively governed by the laws of the State of Tennessee. In the event that any section and/or term of this Agreement, or any exhibits hereto, becomes subject to litigation, the venue for such action will be exclusively maintained in a court of competent jurisdiction sitting in Williamson County, Tennessee.

b. **Notices.** All notices, demands and requests to be given hereunder by either party shall be in writing and must be sent by certified or registered mail and shall be deemed properly given if tendered at the address below or at such other address as either party shall designate by written notice to the other.

County: **WILLIAMSON COUNTY, TENNESSEE**
County Administrative Complex
1320 West Main Street, Suite 125
Franklin, TN 37064
Attn: County Mayor

City: **CITY OF FRANKLIN**
Franklin City Hall
109 Second Ave. South
Franklin, TN 37064
Attn: City Mayor

c. **Entire Agreement and Modifications in Writing.** This Agreement and any exhibits included herewith at the time of execution of this Agreement contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing and signed by the parties and attached hereto.

d. **Dispute Resolution.** The parties may agree to participate in non-binding mediation in an attempt to resolve any disputes. Notwithstanding the foregoing statement, any claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or breach thereof, shall be subject to and decided by a court of law.

e. **Assignment.** The rights and obligations of this Agreement are not assignable.

f. **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties against who charged.

g. **Headings.** The headings in this Agreement are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

h. **Employment Practices.** Neither party shall subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex or which is in violation of applicable laws concerning the employment of individuals with disabilities. The parties shall not knowingly hire any unauthorized employees or fail to comply with record keeping requirements set forth in the Federal Immigration Reform and Control Act of 1986, Chapter 878 of the 2006 Tennessee Public Acts and all other applicable laws.

i. **Relationship Between the Parties.** The relationship of the parties shall be that of an independent Contractor. No principal-agent or employer-employee relationship is created by this Agreement. The parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

j. **Severability.** If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any expressed provisions of law or contrary to any policy of expressed law, although not expressly prohibited, or contrary to any express provision of public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Agreement.

k. **Specific Performance.** The parties recognize that the rights afforded to each under this Agreement are unique and, accordingly, County shall, in addition to such other remedies as may be available to them in equity, have the right to enforce their respective rights hereunder by an action for injunctive relief and/or specific performance to the extent permitted by law.

l. **Compliance with Laws.** The parties shall comply with all laws of the United States of America, the State of Tennessee, and local laws and shall secure all necessary permits and licenses and keep the same in force during the term of this Agreement.

m. **Effective Date.** This Agreement shall not be binding upon the parties until it has been properly approved by the legislative bodies of the respective parties, it has then been signed first by the authorized

representatives for the City and then by the authorized representatives of Williamson County and has been filed in the office of the County Mayor. When it has been so signed and filed, this contract shall be effective as of the date written below.

IN WITNESS WHEREOF, the County and the City have executed this Agreement effective as of the date and year written below.

ATTEST: _____

WILLIAMSON COUNTY, TENNESSEE

BY: _____

BY: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

Williamson County Attorney

ATTEST: _____

CITY OF FRANKLIN, TENNESSEE

BY: _____

BY: _____

DATE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

Shauna R. Billingsley
Franklin City Attorney

AUG 2 AM 9:34

BUERGER, MOSELEY & CARSON, PLC

Williamson County Attorneys
306 Public Square
Franklin, TN 37064
(615) 794-8850
(615) 790-8861 Fax



ROBERT COOK
rcook@buergerlaw.com

August 1, 2011

VIA HAND DELIVERY

Eric Stuckey
Franklin City Administrator
109 3rd Avenue South
Franklin, TN 37064

Re: Landscape Bond

Dear Mr. Stuckey:

As I believe you are aware, Williamson County and the City of Franklin are currently negotiating an interlocal agreement that will satisfy future landscaping bonding requirements. Due to time constraints and the need to continue the Parks and Recreation project, Doug Hood has directed me to provide you this correspondence as a show of good faith that the County intends to comply with all terms and obligations contained in a final interlocal agreement once it has been agreed and approved by the parties.

Should you have any questions or require any further assistance from me please feel free to contact me at your convenience.

Sincerely,

BUERGER, MOSELEY & CARSON, PLC

Robert Cook

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cc: Doug Hood